

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Castlewood Apartments,
Petitioner-Appellant,

v.

City of Davenport Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-103-0827
Parcel No. T2053D01A

On August 10, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Castlewood Apartments, submitted evidence in support of its petition and was represented by Attorney Samuel Kreamer at hearing. The Board of Review designated City Attorney Tom Warner as its legal representative and submitted evidence in support of its decision. It participated in the hearing by telephone. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Castlewood Apartments (Castlewood) appeals from the City of Davenport Board of Review decision reassessing its property located at 2002 Emerald Drive, Davenport, Iowa. According to the property record card, the subject property consists of eleven garden-style apartment buildings built in 1981 on a 224,770 square-foot site. There are three building types and a total of ninety-six living units. There is one of the first style, which is a three-story 18,910 square-foot building with eighteen, two-bedroom apartments and office space. The building has a porch and canopy. There are two of the second style, which are three-story 21,996 square-foot buildings with twenty-three, two-bedroom apartments. This building also has an open porch and open area. There are eight of the third style, which are two-story 4056 square-foot buildings with four, three-bedroom apartments, two open areas

and two covered porches. The property is also improved by 55,000 square feet of asphalt paving and yard lighting.

The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$2,959,895, representing \$251,136 in land value and \$2,708,759 in improvement value.

Castlewood protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b), and that there was a downward change in value under section 441.37(1) and 441.35. The Board of Review denied the petition.

Castlewood then appealed to this Board and reasserted its claims of over-assessment and downward change in value. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment. Castlewood claims that \$1,627,942, allocated \$251,136 to land value and \$1,376,806 to improvement value, is the actual value and a fair assessment of the property.

CPA Richard Millspaugh of Savage & Browning, LLC, Overland Park, Kansas, testified on behalf of Castlewood. He described the apartment complex as a semi-circle of buildings around a central parking area in a residential neighborhood in the northwest part of Davenport. According to Millspaugh, Castlewood has no amenities, such as a playground, recreation building, decks, or patios. Castlewood's occupants are low-income tenants with subsidized rent. In his opinion, investors prefer conventional rental units to low-income rental properties even though the latter may have steady income and high occupancy. He reports low-income properties¹ typically have higher maintenance expenses and reduced value compared to conventional apartments.

¹ There are two types of assistance for renters under the federal housing programs; project-based assistance and tenant-based assistance. Project-based assistance is tied to a particular housing project. Under tenant-based assistance, HUD pays the participants vouchers entitling the participant to select a unit anywhere in the public housing authority's

Millspaugh developed cost, income and sales approaches to valuation. He testified he used the 2008 IOWA REAL PROPERTY APPRAISAL MANUAL to calculate value by the cost method. He applied 60% physical depreciation and 10% functional obsolescence to the pre-computed commercial schedules in the manual. Assuming \$412,800 as the market value of the land, plus the replacement cost new less depreciation for wood-frame, low-rise apartments of \$2,025,433 and \$50,080 for site improvements, he calculated a \$2,490,000 value using the cost approach.

Millspaugh developed an income valuation using three years actual net operating income based on 7% vacancy rate and credit loss, and a total capitalization rate of 12.935% (9% plus 3.935% effective tax rate). He subtracted 2.5% for personal property value. His indicated total value was \$2,214,600 (rounded) or \$23,069 per unit, as compared to the total assessed value of \$2,959,895 or \$30,832 per unit.

Millspaugh developed a sales approach to value using four 2006-2007 apartment complex sales. He disregarded one property because of dissimilar unit size, and adjusted properties for size, location and time of sale. His largest adjustment (-18%) was made for time of sale because he felt all of the comparable sales occurred before the beginning of the current recession. He supports this position with data of asking price trends from January 2006 to January 2010 for multifamily listings reported on LoopNet for Davenport. In Millspaugh's opinion, adjustments for age and quality-condition were not warranted. The adjusted sale prices per square foot ranged from \$21.55 to \$25.89 with an average of \$24.41. This averaging method resulted in a value of \$20,131 per unit and a total indicated value of \$1,932,601.

Deputy City Assessor Tom McManus testified on behalf of the Board of Review. He testified he developed the cost and income approaches to value the subject property. He reported that he initially used the market approach because he lacked income and expense data at that time.

jurisdiction. *Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 211, 222 (Iowa 2004). Castlewood falls under section 8, a tenant-based assistance program.

Subsequently, he developed the income approach and relied primarily upon it. He used a lower effective gross income than actual revenue; however, he used a 33% expense rate based on an overall city apartment rate, whereas the actual expense rate was 65% of income. McManus testified he used a total capitalization rate of 14.13%, including 10.5% overall rate and 3.63% effective tax rate to arrive at a \$2,715,700 value for 2005 which was increased by a 9% state equalization order for commercial properties to \$2,960,113. McManus testified he assessed a similarly aged and sized, low-income, subsidized apartment complex within six blocks of the subject property called Emeis Apartments. This complex has 84 units built in 1970 and is located six blocks from the subject property. The Emeis property was assessed at \$2,631,696 in 2008 which was reduced to \$1,669,213, or \$21.78 per square foot, in 2009 after district court action. The assessed value per unit is \$19,872. By contrast, the subject property is assessed at \$31.64 per square foot or \$30,832 per unit and appellant calculates a value of \$23.67 per square foot or \$23,069 per unit under the income approach.

The Board of Review submitted evidence of five 2006 to 2009 apartment sales with 17 units to 72 units, three 2001 to 2003 co-op sales with 80 units to 356 units, seven 2006 to 2009 sales of smaller apartment complexes with 8 units to 28 units, and six properties without sales data it considered equitably assessed with 44 units to 84 units. The subject property has 96 units. None of this data was adjusted for age, quality or location; however, per square-foot information was provided. The unadjusted apartment sales ranged from \$34.48 to \$45.74 per square foot, the co-op sales ranged from \$26.79 to \$33.27 per square foot. The subject property is assessed at \$31.64 per square foot. The co-op sales are dated and the ownership model differs, making this information unhelpful. Since adjustments were not made to the sales data of the similarly sized apartment complexes, this data is not useful for comparison. McManus testified he did not know the size of his comparable sales and they might have larger units. The apartment complexes were from throughout city and not restricted by location or limited to section 8 housing.

Reviewing the record as a whole, we find the preponderance of the evidence establishes that the subject property is assessed for more than authorized by law. The most appropriate evidence of the fair market value of the property is provided by the three approaches to valuation developed by Millspaugh. He valued the property at \$2,214,600 by the income approach, \$2,490,000 by the cost approach, and \$1,932,601 by the sales approach. We believe the sales approach is the most reliable indicator of value for this property. The per unit value by this method of \$20,131 is not out of line with the \$19,872 per unit value set in Scott County District Court for the comparable nearby section 8 property, the Emeis Apartments.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If

sales are not available, “other factors” may be considered in arriving at market value. § 441.21(2).

The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). To ensure an accurate comparison, the law requires comparable properties be used. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 782-783 (Iowa 2009). In order to truly compare properties, adjustments need to be made. *Id.* (noting “the market value of the assessed property must be adjusted to account for differences between the comparable property and the assessed property to the extent differences would distort the market value of the assessed property in the absence of such adjustments”). “Whether other property is sufficiently similar and *its sale* sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court,” or in this case, PAAB. *Id.*

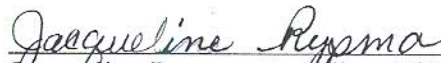
We find the subject property is sufficiently similar to the comparable properties, as adjusted, to support a finding the Castlewood property is assessed for more than fair market value.

Therefore, we modify the Castlewood property assessment as determined by the Board of Review. The Appeal Board determines the property assessment value as of January 1, 2009, is \$1,932,601, representing, \$251,136 in land value and \$1,681,465 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the City of Davenport County Board of Review is modified as set forth herein.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Scott County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 18 day of October 2010.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-18</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	